

~~IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA~~
HAMMOND DIVISION

UNITED STATES OF AMERICA and the)	
STATE OF INDIANA,)	
)	
Plaintiffs,)	
)	
v.)	Cause No. 2:17-cv-048-PPS
)	
THE SANITARY DISTRICT OF)	
HAMMOND,)	
)	
Defendant.)	
_____)	

**MOTION TO INTERVENE BY
HOOSIER ENVIRONMENTAL COUNCIL**

Proposed Intervenor-Plaintiff Hoosier Environmental Council (“HEC”) respectfully moves to intervene in this case pursuant to Federal Rule of Civil Procedure 24(a) and (b) and Section 505(b)(1)(B) of the Clean Water Act. This motion is necessitated by the recent discovery that defendant Sanitary District of Hammond has delayed for more than a year the construction of a wastewater treatment project required by the Consent Decree. Defendant asserts that this continuing delay is caused by a dispute with the Town of Munster – a member of the Sanitary District – over a rate increase to pay for the project. Although the Consent Decree expressly excludes “financial inability to perform any obligation” from constituting a *force majeure* event, Plaintiffs have done nothing to enforce the Court-approved schedule. Meanwhile, millions of gallons of untreated sewage and other wastewaters are being discharged into the Little Calumet River from the Sanitary District’s combined sewer outfalls and Highland and Griffith are being delayed in completing their own consent decree obligations. HEC seeks to intervene to prevent the Parties from continuing to ignore the Court’s Consent Decree’s schedule.

Federal Rule of Civil Procedure 24 provides a clear path for HEC to intervene. Rule 24(a)(2) allows intervention as of right in situations like this, where the main action implicates HEC's interest in the use and enjoyment of the Little Calumet River, and the original parties have demonstrated they no longer "adequately represent" HEC's interest. Should the Court find Rule 24(a)(2) inapplicable, Rule 24(a)(1) provides for HEC's intervention by unconditional statutory right under Section 505(1)(B) of the Clean Water Act, which allows any citizen to intervene where the government "has commenced and is diligently prosecuting" an enforcement action. The Court may also exercise its discretion under Rule 24(b) to allow intervention, because, as the Rule requires, HEC's claim "shares with the main action common questions of law and fact," and the limited role HEC seeks would not cause delay or prejudice.

HEC does not seek to modify the terms of the Consent Decree entered by this Court in 2017. On the contrary, HEC seeks to prevent the Parties from secretly and indefinitely delaying completion of a new treatment facility, thereby modifying the schedule for completion of the Consent Decree as entered. HEC's motion to intervene seeks to uphold the settled expectations of the parties and the public set forth in the 2017 Consent Decree. A declaration by HEC's Senior Policy and Legal Director adopting the Complaint filed by the United States and the State of Indiana in compliance with Federal Rule of Civil Procedure 24(c) is attached as Exhibit A.

For the reasons set forth in the accompanying memorandum in support of intervention, the Court should grant HEC intervention as of right or, in the alternative, permissive intervention, so that HEC can monitor and oversee the Parties' prompt compliance with the terms of the Consent Decree entered in this Clean Water Act action.

Respectfully submitted,

A handwritten signature in blue ink that reads "Michael J. Zoeller". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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